

National Treasury Employees Union



**TESTIMONY OF NTEU NATIONAL PRESIDENT
COLLEEN M. KELLEY**

ON

**HUMAN CAPITAL ISSUES AT THE DEPARTMENT
OF HOMELAND SECURITY**

BEFORE

**THE HOUSE HOMELAND SECURITY COMMITTEE
SUBCOMMITTEE ON MANAGEMENT, INTEGRATION
AND OVERSIGHT**

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Chairman Rogers, Ranking Member Meek, I would like to thank the subcommittee for the opportunity to testify on human capital issues at the Department of Homeland Security (DHS).

As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal employees, 15,000 of whom are Customs and Border Protection (CBP) employees at the Department of Homeland Security. I am also pleased to have served as the representative of NTEU on the DHS Senior Review Committee (SRC) that was tasked with presenting to then-DHS Secretary Tom Ridge and then-OPM Director Kay Coles James, options for a new human resources (HR) system for all DHS employees. NTEU was also a part of the statutorily mandated “meet and confer” process with DHS and OPM from June through August 2004.

It was unfortunate that after two years of “collaborating” with DHS and OPM on a new personnel system for DHS employees that NTEU was unable to support the final regulations. While some positive changes were made because of the collaboration between the federal employee representatives and DHS and OPM during the meet and confer process, NTEU was extremely disappointed that the final regulations fell woefully short on a number of the Homeland Security Act’s (HSA) statutory mandates. The most important being the mandates that DHS employees may, “organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them,” (5 U.S.C. 9701(b)(4)) as well as the mandate that any changes to the current adverse action procedures must “further the fair, efficient and expeditious resolutions of matters involving the employees of the Department.” (5 U.S.C. 9701(f)(2)(C)).

Because the final personnel regulations failed to meet the statutory requirements of the HSA in the areas of collective bargaining, due process and appeal rights, NTEU, along with other federal employee unions, filed a lawsuit in Federal court. On August 12, 2005, the federal district court ruled the labor-management relations and appeals portions of the DHS final personnel regulations illegal and enjoined their implementation by DHS. The court found that the regulations did not provide for collective bargaining or fair treatment of employees as required by the Act. DHS appealed the district court’s decision to the U.S. Court of Appeals for the District of Columbia Circuit. Oral arguments were heard by the appeals court on April 6, 2006. If NTEU’s challenge is sustained, as we expect, DHS will be required to rewrite the regulations to conform to law. If not, Congress should act to ensure that DHS complies with its clear directives regarding collective bargaining, due process and appeal rights.

As the subcommittee is aware, the HSA allowed the DHS Secretary and the OPM Director to make changes in certain sections of Title 5 that have governed the employment rights of federal employees for over 20 years. In the first part of my testimony, I will focus my comments on three areas of the final personnel regulations that fell short of protecting federal employees’ rights: labor relations/collective bargaining, due process rights, and the pay for performance system.

DHS PERSONNEL REGULATIONS ISSUES

The Homeland Security Act requires that any new human resource management system “ensure that employees may organize, bargain collectively, and participate through labor

organizations of their own choosing in decisions which affect them.” NTEU believes that the final regulations do not meet this statutory requirement in the following ways.

Labor Relations/Collective Bargaining

Under the final personnel regulations, the responsibility for deciding collective bargaining disputes will lie with a three-member DHS Labor Relations Board appointed by the Secretary of the Department of Homeland Security. Senate confirmation will not be required, nor is political diversity required among the Board members. Currently, throughout the federal government, collective bargaining disputes are decided by the Federal Labor Relations Authority (FLRA), an independent body appointed by the President and confirmed by the Senate. A true system of collective bargaining demands independent third party determination of disputes. The final regulations do not provide for that, instead creating an internal system in which people appointed by the Secretary will be charged with deciding matters directly impacting the Secretary’s actions. The district court ruled this section of the regulations illegal.

Under the final regulations, not only will management rights associated with operational matters (subjects that include deployment of personnel, assignment of work, and the use of technology) be non-negotiable, but even the impact and implementation of most management actions will be non-negotiable. In other words, employee representatives will no longer be able to bargain on behalf of employees concerning the procedures that will be followed when DHS management changes basic conditions of work, such as employees’ rotation between different shifts or posts of duty, or scheduling of days off.

The final regulations further reduce DHS’ obligation to collectively bargain over the already narrow scope of negotiable matters by making department-wide regulations non-negotiable. Bargaining is currently precluded only over government-wide regulations and agency regulations for which a “compelling need” exists. The new DHS personnel system would also allow management to void existing collective bargaining agreements, and render matters non-negotiable, simply by issuing a department-wide regulation. The district court ruled this section of the regulations illegal.

A real life example of the adverse effect of the negotiability limitations on both employees and the agency will be in the area of determining work shifts. Currently, the agency has the ability to determine what the shift hours will be at a particular port of entry, the number of people on the shift, and the job qualifications of the personnel on that shift. The union representing the employees has the ability to negotiate with the agency, once the shift specifications are determined, as to which eligible employees will work which shift. This can be determined by such criteria as seniority, expertise, volunteers, or a number of other factors.

CBP Officers around the country have overwhelmingly supported this method for determining their work schedules for a number of reasons. One, it provides employees with a transparent and credible system for determining how they will be chosen for a shift. They may not like management’s decision that they have to work the midnight shift but the process is credible and both sides can agree to its implementation. Two, it takes into consideration lifestyle issues of individual officers, such as single parents with day care needs, employees taking care of sick family members or officers who prefer to work night shifts. The new personnel system’s elimination of employee input into this type of routine workplace decision-making has had a negative impact on morale.

Due Process and Appeal Rights

One of the core statutory underpinnings of the HSA was Congress' determination that DHS employees be afforded due process and that they are treated in a fair manner in appeals they bring before the agency. In fact, the HSA clearly states that the DHS Secretary and OPM Director may modify the current appeals procedures of Title 5, Chapter 77, only in order to, "further the fair, efficient, and expeditious resolution of matters involving the employees of the Department." (5U.S.C. 9701 (f) (2) (C)). Instead the final regulations undermine this statutory provision in a number of ways.

The final regulations undercut the fairness of the appeals process for DHS employees by eliminating the Merit Systems Protection Board's (MSPB) current authority to modify agency-imposed penalties. The result is that DHS employees will no longer be able to challenge the reasonableness of penalties imposed against them, and the MSPB will now only be authorized to modify agency-imposed penalties under very limited circumstances where the penalty is "wholly unjustified," a standard that will be virtually impossible for DHS employees to meet.

The final regulations exceed the authority given in the HSA to the Secretary and OPM Director, by giving the Federal Labor Relations Authority (FLRA) and the MSPB new duties and rules of operation not set by statute. The FLRA and the MSPB are independent agencies, and DHS and OPM are not authorized to impose obligations on either independent agency, or dictate how they will exercise their jurisdiction over collective bargaining and other personnel matters.

In the final regulations, the FLRA is assigned new duties to act as an adjudicator of disputes that arise under the new labor relations system and the regulations also dictate which disputes the FLRA will address and how they will address them.

In addition, the final regulations conscript the Merit System Protection Board as an appellate body to review, on a deferential basis, findings of the new Mandatory Removal Panel (MRP). Chapter 12 of Title 5, which sets out MSPB's jurisdiction, does not authorize this kind of action by the Board and the DHS Secretary and OPM Director are not empowered to authorize it through regulation. A similar appellate role is given to the FLRA. It is tasked with reviewing decisions of the Homeland Security Labor Relations Board (HSLRB) on a deferential basis. There is no authority for assigning such a role to the FLRA and the district court has ruled these provisions illegal.

The final regulations also provide the Secretary with unfettered discretion to create a list of Mandatory Removal Offenses (MRO) that will only be appealable on the merits to an internal DHS Mandatory Removal Panel (MRP) appointed by the Secretary.

The final regulations include a preliminary list of seven potential mandatory removal offenses but are not the exclusive list of offenses. The final regulations also provide that the Secretary can add or subtract MRO's by the use of the Department's implementing directive mechanism and that the Secretary has the sole, exclusive, and unreviewable discretion to mitigate a removal penalty.

By going far beyond the statutory parameters of the HSA, and drastically altering the collective bargaining, due process and appeal rights of DHS personnel, the district court ruled these sections of the proposed regulations illegal. The overreaching by DHS in formulating these personnel regulation and the subsequent court ruling leaves CBP employees with little or no confidence that they will be treated fairly by the agency with respect to labor-management relations, appeals or pay by the department.

MaxHR Pay-for-Performance Proposal

While not a part of the lawsuit filed by NTEU and other federal employee representatives, the final regulations as they relate to changes in the current pay, performance and classification systems of DHS employees must be brought to the attention of this subcommittee. While the final regulations lay out the general concepts of a new pay system, they remain woefully short on details.

Too many of the key features of the new system have yet to be determined. The final regulations make clear that the agency will be fleshing out the system's details in management-issued implementing directives while using an expensive outside contractor that will cost the agency tens of millions of dollars that could be used for additional front line personnel. Among the important features yet to be determined by the agency are the grouping of jobs into occupational clusters, the establishment of pay bands for each cluster, the establishment of how market surveys will be used to set pay bands, how locality pay will be set for each locality and occupation, and how different rates of performance-based pay will be determined for the varying levels of performance.

And, much to the consternation of short staffed frontline CBP employees, the President's FY 2007 Budget requests an additional \$41.7 million for implementation of MaxHR. This request is a **133% increase** from \$29.7 million in FY 2006 to \$71.4 million in FY 2007 including \$15 million for establishment of pay pools; \$22 million in implementation and operational costs; and \$4.75 million to fund the Homeland Security Labor Relations Board, the creation of which the District Court ruling has enjoined. The President's budget funds an additional 16 FTEs to administer MaxHR. In contrast, the FY 07 budget request for salaries and expenses for Border Security, Inspection and Trade Facilitation at the understaffed 317 Ports of Entry (POEs) is \$32 million—adding only 21 FTEs.

NTEU is especially mindful of the fact that the more radical the change, the greater the potential for disruption and loss of mission focus, at a time when the country can ill-afford DHS and its employees being distracted from protecting the security of our homeland. However, before any changes are made to tie employees' pay to performance ratings, DHS must come up with a fair and effective performance system.

CBP employees got a preview this past winter as to how DHS will administer a new pay-for-performance program when it unlawfully terminated the negotiated Awards and Recognition procedures and unilaterally imposed its own awards system. At the conclusion of the FY 2005 awards process, CBP, contrary to the parties' seven year practice of publicizing the

names and accomplishments of award recipients as determined by a joint union-management committee, embarked on a policy of refusing to reveal the results of its awards decisions, the amount of the awards, and the accomplishments that resulted in the granting of the award so that employees in the future could emulate these accomplishments and too win an award.

Not only were the unilaterally decided award results not publicized, but NTEU Chapters report that some employees were specifically told not to reveal that they had received an award. CBP has refused to provide NTEU at the national level with the results of its awards decisions. NTEU has informed DHS that CBP's strenuous efforts to hide its awards decisions make a mockery of DHS's promise that any pay-for-performance system it implements will be transparent and trusted by its employees.

NTEU has received a favorable arbitration decision concluding that CBP unlawfully terminated the joint union-management Awards and Recognition program and unilaterally imposed its own awards system. The arbitrator ordered CBP to return to the prior joint awards process and to rerun the fiscal year 2005 awards process using the negotiated procedure. CBP has delayed the ultimate resolution of this issue by appealing the arbitrator's decision to the FLRA asking the Authority to overturn the arbitrator's decision "in order to improve employee morale."

The disarray in the formulation of the new pay-for-performance program at DHS continues. DHS was slated to move headquarters, Information Analysis and Infrastructure Protection, Science and Technology, Emergency Preparedness and Response and Federal Law Enforcement Training Center employees into the MaxHR pay-for-performance system by February 2006, but has delayed this move until January 2007. MaxHR initial pay changes have been bumped from January 2007 to January 2008.

The proposed pay system lacks the transparency and objectivity of the General Schedule. If the proposed system is implemented, employees will have no basis to accurately predict their salaries from year to year. They will have no way of knowing how much of an annual increase they will receive, or whether they will receive any annual increase at all, despite having met or exceeded all performance expectations identified by the Department. The "pay-for-performance" element of the proposal will pit employees against each other for performance-based increases. Making DHS employees compete against each other for pay increases will undermine the spirit of cooperation and teamwork needed to keep our country safe from terrorists, smugglers, and others who wish to do America harm.

One thing is clear. The proposed pay system will be extremely complex and costly to administer. A new bureaucracy will have to be created, and it will be dedicated to making the myriad, and yet-to-be identified, pay-related decisions that the new system would require.

IMPEDIMENTS TO MISSION ACCOMPLISHMENT

The second part of my testimony addresses DHS staffing and personnel policies that have deleteriously affected CBP employee morale and threaten the agency's ability to successfully meet its critical missions.

OPM Survey Results

A recent OPM survey of federal employees revealed that employees rated DHS 29th out of 30 agencies considered as a good place to work. On key areas covered by the survey, employees' attitudes in most categories were less positive and more negative than those registered by employees in other federal agencies. Employee answers on specific questions revealed that 44% of DHS employees believe their supervisors are doing a fair to a very poor job; less than 20% believe that personnel decisions are based on merit; only 28% are satisfied with the practices and policies of senior leaders; 29% believe grievances are resolved fairly; 27% would not recommend DHS as a place to work; 62% believe DHS is an average or below average place to work; only 33% believe that arbitrary action, favoritism, and partisan political action are not tolerated; over 40% are not satisfied with their involvement in decisions that affect their work; 52% do not feel that promotions are based on merit; and over 50% believe their leaders do not generate high levels of motivation and commitment. On the other hand, most employees feel there is a sense of cooperation among their coworkers to get the job done.

The results of this OPM survey raise serious questions about the department's ability to recruit and retain the top notch personnel necessary to accomplish the critical missions that keep our country safe. According to OPM, 44 percent of all federal workers and 42 percent of non-supervisory workers will become eligible to retire within the next five years. If the agency's goal is to build a workforce that feels both valued and respected, the results from the OPM survey clearly show that the agency needs to make major changes in its treatment of employees.

Staffing Shortages at the Ports of Entry

The President's FY 2007 budget proposal requests about \$4.4 billion for the Department of Homeland Security's (DHS) U.S. Customs and Border Protection Bureau. This is a 12 percent increase in CBP's budget, but the bulk of the new money is to fund the hiring of 1,500 Border Patrol agents. For salaries and expenses for Border Security, Inspection and Trade Facilitation at the 317 Ports of Entry (POEs), the budget calls for an increase of only \$32 million, adding just 21 Full Time Equivalents (FTEs).

According to the GAO, **"as of June 2003, CBP has not increased staffing levels [at the POEs]"** (see GAO-05-663 page 19) and **"CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide** or assure that officers are allocated to airports with the greatest needs...CBP is developing a staffing model...however the new model...will not be used assess optimal level of staff to ensure security while facilitating travel at individual port and port facilities, including airports."

It is instructive here to note that the former U.S. Customs Service's last internal review of staffing for Fiscal Years 2000-2002 dated February 25, 2000, known as the Resource Allocation Model or R.A.M., shows that the Customs Service needed over 14,776 new hires just to fulfill its basic mission--and that was before September 11. Since then the Department of Homeland Security was created and the U.S. Customs Service was merged with the Immigration and Naturalization Service and parts of the Agriculture Plant Health Inspection Service to create

Customs and Border Protection and given an expanded mission of providing the first line of defense against terrorism, but also to make sure trade laws are enforced and trade revenue collected.

Staffing Shortages at the Airports: According to GAO-05-663: International Air Passengers Staffing Model for Airport Inspections Personnel Can Be Improved, July 2005, there is much evidence that airports are experiencing staffing shortages. This report was prepared at the request of the House Subcommittee on Immigration, Border Security and Claims, Committee on Judiciary.

CBP has two overarching and sometimes conflicting goals: increasing security while facilitating trade and travel. Prior to 9/11 there was a law on the books requiring INS to process incoming international passengers within 45 minutes. The Enhanced Border Security and Visa Protection Act of 2002 repealed the 45 minute standard; however, “it added a provision specifying that staffing levels estimated by CBP in workforce models be based upon the goal of providing immigration services within 45 minutes (page 12-13).” NTEU believes that staffing levels are not adequate to meet the 45 minute rule while enforcing necessary security measures.

Staffing Shortages at the Seaports: The Dubai Ports sale has recently put a spotlight on the issue of seaport security. The Administration states that the Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT) program are ensuring that 100% of foreign cargo is being scanned for WMD or other terrorist contraband either at the foreign departure port or at the POE. According to GAO-05-557 on Container Security, “CBP has developed a staffing model to determine staffing needs but has been unable to fully staff some ports...As a result, 35 percent of these shipments were not targeted and were therefore not subject to inspection overseas.” (see highlights page.)

In another GAO report (GAO-05-466T) on Key Cargo Security Programs, GAO found “several factors limit CBP’s ability to successfully target containers to determine if they are high-risk. One factor is staffing imbalances...”(see highlights page.) At port security hearings in both the House and Senate last month, GAO testified that staffing issues continue to impede the effectiveness of CSI and C-TPAT.

NTEU is gratified and wholeheartedly supports the provisions in the House-passed immigration and border security bill and SAFE Ports Act that authorize the hiring of 1250 new CBPOs at the POEs over the next five years. Without an appropriation to fund these new positions, CBP will continue to be plagued with staffing shortages at the POEs.

Staffing Shortages in Trade Enforcement: When CBP was created, it was given a dual mission of not only safeguarding our nation’s borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws. In 2005, CBP processed 29 million trade entries and collected \$31.4 billion in revenue.

Section 412(b) of the Homeland Security Act of 2002 (P.L.107-296) mandates that “the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those

functions...performed by the United States Customs Service...on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.”

When questioned on compliance with Sec. 412(b), then-CBP Commissioner Bonner stated in a June 16, 2005 letter to Representative Rangel that “While overall spending has increased, budget constraints and competing priorities have caused overall personnel levels to decline.” The bottom line is that DHS is non-compliant with Section 412(b) of the HSA. As stated in the June 16, 2005 letter, “CBP employed 1,080 non-supervisory import specialists in FY 2001 and 948 as of March 2005.” CBP’s most recent data shows 892 full-time, plus 21 part-time Import Specialists—913 total employed by CBP.

On March 30, 2006, NTEU-supported legislation was introduced in the House and Senate, S. 2481 and H.R. 5069, that would require the Department of Homeland Security to comply with Section 412(b) of the Homeland Security Act (P.L. 107-296). NTEU urges the Committee to inquire of CBP their plans to become compliant with Section 412(b) and their timeline to become compliant.

One Face at the Border Initiative

The One Face at the Border (OFAB) initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. In practice the OFAB initiative has resulted in diluting customs, immigration and agriculture inspection specialization and the quality of passenger and cargo inspections.

Under OFAB, former INS officers that are experts in identifying counterfeit foreign visas are now at seaports reviewing bills of lading from foreign container ships, while expert seaport Customs inspectors are now reviewing passports at airports. The processes, procedures and skills are very different at land, sea and air ports, as are the training and skill sets needed for passenger processing and cargo inspection.

It is apparent that CBP sees its One Face at the Border initiative as a means to “increase management flexibility” without increasing staffing levels. Congress, in the Immigration and Border Security bill passed by the House last year, HR 4437, section 105, requires the Secretary of Homeland Security to submit a report to Congress “describing the tangible and quantifiable benefits of the One Face at the Border Initiative...outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions...” NTEU believes such a report will reveal the serious negative impact on national security of this misguided program.

Law Enforcement Status

The most significant source of consternation for CBPOs, is the lack of law enforcement officer (LEO) status for CBP officers. LEO recognition is of vital importance to CBP officers,

CBP Officers perform work every day that is as demanding and dangerous as any member of the federal law enforcement community, yet they have long been denied LEO status.

Within the CBP there are two classes of federal employees, those with law enforcement officer status and its benefits and those without. Unfortunately, CBP officers and Canine Enforcement Officers fall into the latter class and are denied benefits given to other federal employees in CBP who they work with at 317 ports-of-entry across the country.

A remedy to this situation exists in an important piece of legislation involving the definition of law enforcement officer introduced in this Congress, H.R. 1002, Law Enforcement Officers Equity Act of 2005. NTEU strongly supports this bipartisan legislation introduced by Representatives Bob Filner (D-CA) and John McHugh (R-NY) and has 151 cosponsors to date, including Homeland Security Committee Chairman Peter King (R-NY) and full Committee and Subcommittee Ranking Members Bennie Thompson (D-MS) and Kendrick Meek (D-FL). This legislation would treat CBP Officers as law enforcement officers for the purpose of 20-year retirement.

When law enforcement officers from different agencies join forces on a drug raid or to search a boat for armed smugglers or terrorists, CBP officers are often the only officers on the scene who are not considered law enforcement personnel for retirement purposes. They all face the same dangers and the risk of death or injury, but they don't all have the same rights and status.

CBP Officers carry weapons, and at least three times a year, they must qualify and maintain proficiency on a firearm range. CBP Officers have the authority to apprehend and detain those engaged in smuggling drugs and violating other civil and criminal laws. They have search and seizure authority, as well as the authority to enforce warrants. All of which are standard tests of law enforcement officer status.

Every day, CBP Officers stand on the front lines in the war to stop the flow of drugs, pornography and illegal contraband into the United States. It was a legacy Customs Inspector who apprehended a terrorist trying to cross the border into Washington State with the intent to blow up Los Angeles International Airport in December 1999.

On February 28, 2006, another deadly shooting occurred at a U.S. border crossing, the third in a little more than a month, at Brownsville, Texas, when CBPOs were forced to open fire on the driver of a stolen vehicle who was attempting to flee across the border. At least two CBPOs were involved as the suspect turned the vehicle toward them and tried to run them down in an effort to escape. Earlier in 2006, similar shootouts occurred between CBPOs and fugitives at the U.S.-Canada border in Blaine, Washington, and at the southwest border in Douglas, Arizona.

As in the case of the other two recent border shootings, when local law enforcement officers needed help to capture or stop a suspect, they reached out to CBPOs. CBPOs at our borders are required to carry firearms, are trained in their use and have arrest authority, there is simply no justification for continuing to deny them law enforcement officer status. Terrorists,

drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Many people do not recognize the sacrifices that CBPOs and Canine Enforcement Officers make for the CBP. Their lives are controlled by their jobs. They rarely work regular 9 to 5 schedules and they have little control over the schedules they do work in any given two-week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts. The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many CBPOs. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment.

Given the significance of these jobs, it is vitally important for CBP to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. NTEU believes the same compelling reasons exist here.

Newer hires to CBP are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received costly training and on-the-job experience within CBP, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat Customs as a stepping-stone to other law enforcement agencies with more generous retirement benefits.

No Pay for Saturday Training

Customs Inspectors and CBPOs who received basic training at the Federal Law Enforcement Training Center (FLETC) between January 1, 2002, and October 1, 2004, were not compensated for the sixth day of training for each week during that period. After four years of persistent efforts, NTEU has reached a favorable financial settlement with CBP that will provide appropriate compensation to employees who worked unpaid Saturdays during their basic training at FLETC. But, why would CBP want to get its new recruits off to such a negative start? It is this kind of unnecessarily cavalier treatment of employees that has earned DHS the distinction of being one of the worst places to work in the federal government.

Misuse of National Security Considerations

CBP employees are extremely disturbed by the agency's misuse of national and internal security arguments to justify actions that have no security implications, while ignoring real threats to our nation's security. This issue was dramatically highlighted when it became known that CBP had raised no security questions about the United Arab Emirates owned, Dubai Ports World, buying port facilities in the U.S. Yet, the list of actions that CBP has raised security concerns about is long and ridiculous. Some examples of CBP's misuse of security considerations include:

Warm weather uniforms: CBP argued that wearing uniforms with shorts in very warm climates threatened **internal security**. The Federal Service Impasses Panel (FSIP) found there was no security issue.

Awards: CBP argued that continuing to implement separate negotiated agreements on awards, rather than its preferred single policy would “**increase the risk that potential terrorist, terrorist weapons or components would be undeterred and go undetected resulting in real or perceived harm to our nation’s economic stability and /or its citizens.**” An arbitrator found no merit to CBP’s argument.

Grooming Standards: CBP unilaterally imposed new personal grooming standards that prohibit beards, limit the length, style and color of hair, set standards for fingernail grooming and the amount and type of jewelry. CBP argued that these rules were based on **internal security needs and necessary for the successful functioning of the Agency**. An arbitrator ruled against CBP. CBP has appealed the decision.

Alternative Holsters for Pregnant Officers: CBP discontinued a practice of allowing pregnant CBP officers to use shoulder, rather than waist holsters, arguing it was a matter of **internal security**. CBP’s action was upheld.

These are just a few examples of how CBP continues to misuse security considerations to try to justify the unjustifiable. It is particularly disturbing to CBP employees that security concerns are falsely raised on these types of minor issues, yet issues with real security implications, like the Dubai Ports World issue and lack of staffing go unquestioned by CBP.

CONCLUSION

Each year, with trade and travel increasing at astounding rates, CBP personnel have been asked to do more work with fewer personnel, training and resources. The more than 15,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently.

The American public expects its borders and ports be properly defended. Congress must show the public that it is serious about protecting the homeland by fully funding the staffing needs of the CBPOs at our 317 POEs. I urge each of you to visit the land, sea and air CBP ports of entry in your home districts. Talk to the CBPOs, canine officers, and trade entry and import specialists there to fully comprehend the jobs they do and what their work lives are like.

Again, I would like to thank the committee for the opportunity to be here today on behalf of the 150,000 employees represented by NTEU to discuss these extremely important federal employee issues.